

§ 230.155

is the street address of a multi-unit building, the address must include the unit number.

[64 FR 62545, Nov. 16, 1999, as amended at 65 FR 65749, Nov. 2, 2000]

§ 230.155 Integration of abandoned offerings.

PRELIMINARY NOTE: Compliance with paragraph (b) or (c) of this section provides a non-exclusive safe harbor from integration of private and registered offerings. Because of the objectives of Rule 155 and the policies underlying the Act, Rule 155 is not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) *Definition of terms.* For the purposes of this section only, a *private offering* means an unregistered offering of securities that is exempt from registration under Section 4(2) or 4(5) of the Act (15 U.S.C. 77d(2) and 77d(5)) or Rule 506 of Regulation D (§ 230.506).

(b) *Abandoned private offering followed by a registered offering.* A private offering of securities will not be considered part of an offering for which the issuer later files a registration statement if:

(1) No securities were sold in the private offering;

(2) The issuer and any person(s) acting on its behalf terminate all offering activity in the private offering before the issuer files the registration statement;

(3) The Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose information about the abandoned private offering, including:

(i) The size and nature of the private offering;

(ii) The date on which the issuer abandoned the private offering;

(iii) That any offers to buy or indications of interest given in the private offering were rejected or otherwise not accepted; and

(iv) That the prospectus delivered in the registered offering supersedes any offering materials used in the private offering; and

(4) The issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering, unless the issuer and any person

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acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were):

(i) Accredited investors (as that term is defined in § 230.501(a)); or

(ii) Persons who satisfy the knowledge and experience standard of § 230.506(b)(2)(ii).

(c) *Abandoned registered offering followed by a private offering.* An offering for which the issuer filed a registration statement will not be considered part of a later commenced private offering if:

(1) No securities were sold in the registered offering;

(2) The issuer withdraws the registration statement under § 230.477;

(3) Neither the issuer nor any person acting on the issuer's behalf commences the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement under § 230.477;

(4) The issuer notifies each offeree in the private offering that:

(i) The offering is not registered under the Act;

(ii) The securities will be “restricted securities” (as that term is defined in § 230.144(a)(3)) and may not be resold unless they are registered under the Act or an exemption from registration is available;

(iii) Purchasers in the private offering do not have the protection of Section 11 of the Act (15 U.S.C. 77k); and

(iv) A registration statement for the abandoned offering was filed and withdrawn, specifying the effective date of the withdrawal; and

(5) Any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

[66 FR 8896, Feb. 5, 2001, as amended at 76 FR 81805, Dec. 29, 2011]

§ 230.156 Investment company sales literature.

(a) Under the federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule